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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

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No. 1625

RONALD EUGENE ALL, *Petitioner*

v.

STATE OF NORTH CAROLINA, *Respondent*

CARLTON OSCAR WEAVER, *Petitioner*

v.

STATE OF NORTH CAROLINA, *Respondent*

REPLY OF PETITIONERS TO RESPONDENT'S OPPOSITION TO PETITION FOR WRITS OF CERTIORARI

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The petitioners submit this reply to new matters raised by the brief of respondent in opposition to joint petitions for writs of certiorari, as follows:

1. The respondent's reliance upon *Harris* v. *U.S.*, 390 U.S. 234 (1968) (pages 5-7 of the Opposition), to justify the roadside search of the petitioners' vehicle is misplaced. For unlike *Harris* (1) the vehicle here

was not in police custody when searched and (2) the inspection was not shown by the evidence to be for the purpose of protecting the cargo. Even if it were for such purpose, the police officer's act of physically intruding upon the vehicle to inspect its contents constituted a search, which cannot be equated with the benign act of the police officer in *Harris* of rolling up the windshield of the impounded automobile, pursuant to which he discovered the evidence there. The analogy which respondent attempts to draw with the *Harris* case is fallacious and certainly too attentuated to warrant the denial of certiorari.

2. The respondent errs in asserting that the Virginia Statutes authorized impoundment here. Neither of the two grounds for which Section 46.1-2 of the Virginia Code authorizes impoundment were shown to exist. (1) The vehicle had not been left unattended for more than 24 hours on the highway and (2) the record discloses no evidence that leaving the petitioners' vehicle parked on the shoulder of the four lane highway would have constituted a hazard to traffic. The remainder of the respondent's argument is addressed to whether and under what conditions the police, in exigent circumstances, may search the vehicle of a person arrested for a traffic offense. However, this is the very issue which the Court has never answered and is one of the reasons urged for the granting of certiorari (pages 10 to 14 of Joint Petition for Writs of Certiorari).

3. The respondent also cites a section of the Virginia Code authorizing a police officer to search at will and without probable cause the contents and cargo of a motor vehicle. The decision below did not rely upon

this provision and, because of the statute's breadth, it raises the same grave constitutional problems which the petitioners have already asserted as grounds for certiorari here (pages 6 to 8 of the Joint Petition for Writs of Certiorari).

4. Contrary to the respondent's contention, the "plain view" doctrine has no application. *Holland* v. *State,* 93 Okla. CR. 180, 226 P.2d 448 (1951), (where the court ruled that in stepping onto a truck in order to peer over the side boards at the cargo, the police officer had engaged in a search.) Although the police officer, here, saw some indistinguishable items through the cracks in the side boards of the truck when he was checking the license plate, he could not ascertain the true nature of the cargo, the extensiveness of the load, or the brand names of the items until he climbed on the fender and looked into the truck bed.

Accordingly, the hams were not in plain view of the officer while he was standing on the ground. It is no answer that he might have obtained substantially similar information had he been in a helicopter or at some other vantage point. For, in fact, he chose to use an unlawful search to obtain such information. Besides, it is merely speculative that he could have identified the cargo or obtained such precise information about it from some other hypothetical vantage point.

* * * * *

For the foregoing reasons, and for the reasons stated in the Joint Petition for Writs of Certiorari the petitioners respectfully request that certiorari be granted.

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